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Chapter No. 449
10/HR03/R1973CS
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HOUSE BILL NO. 1684

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1684

AN ACT TO CREATE NEW SECTION 27-65-24, MISSISSIPPI CODE OF 1972, TO LEVY A TAX ON THE SALE OF MANUFACTURING OR PROCESSING MACHINERY TO BE INSTALLED AND/OR USED AT A REFINERY IN THIS STATE AND ON THE PERFORMANCE OF CONSTRUCTION ACTIVITIES AT OR IN REGARD TO A REFINERY IN THIS STATE; TO PROVIDE THAT IF THE OWNER OF THE REFINERY HOLDS A DIRECT PAY PERMIT ISSUED BY THE DEPARTMENT OF REVENUE, THE OWNER MUST FURNISH THE PERMIT TO THE SELLER OR PERSON PERFORMING THE CONSTRUCTION ACTIVITY UNLESS THE HOLDER OF THE DIRECT PAY PERMIT IS GIVEN WRITTEN INSTRUCTIONS OR WRITTEN AUTHORITY TO DO OTHERWISE BY THE COMMISSIONER OF REVENUE; TO PROVIDE THAT AFTER BEING FURNISHED THE DIRECT PAY PERMIT, THE SELLER OR PERSON PERFORMING THE CONSTRUCTION ACTIVITY SHALL BE RELIEVED OF THE DUTY TO COLLECT THE TAX AND THE OWNER OF THE REFINERY SHALL PAY THE TAX IN THE MANNER REQUIRED BY RULE AND REGULATION PROMULGATED BY THE COMMISSIONER; TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972, TO EXEMPT CONSTRUCTION ACTIVITIES PERFORMED AT CERTAIN REFINERIES FROM THE TAX IMPOSED BY THIS SECTION; TO AMEND SECTION 27-65-93, MISSISSIPPI CODE OF 1972, TO ALLOW THE HOLDER OF A DIRECT PAY PERMIT TO PAY THE TAXES DUE UNDER SECTION 27-65-24, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 27-67-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE USE TAX SHALL APPLY TO CERTAIN EQUIPMENT USED AT REFINERY OPERATIONS AT THE RATE PROVIDED FOR IN SECTION 27-65-24, MISSISSIPPI CODE OF 1972; TO AMEND SECTIONS 57-3-33, 57-10-255, 57-10-439 AND 57-71-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PURCHASES FINANCED BY CERTAIN BOND PROCEEDS SHALL NOT BE EXEMPT FROM THE TAX LEVIED IN SECTION 27-65-24(1)(b), MISSISSIPPI CODE OF 1972; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The Legislature finds and declares that:

(a) The current taxation for sales tax purposes of certain refineries is extremely complex due to the nature of the refining work performed, the types of structures needed to perform the refinery operations, the multiple tax rates involved and that the incidence of the tax may be on the owner and/or the contractor(s) performing the work.

(b) Due to such complexities, it is in the best interest of the state to establish a tax structure for certain refineries that will reduce the administrative burden of the Department of Revenue related to the collection of the tax due from sales of property and the performance of construction activities at certain refineries, will not reduce or defer any tax currently received from such activities, and will remove the burden from determining the correct rate of tax from the seller or contractor and place such burden on the owner of the facility.

SECTION 2. The following shall be codified as Section 27-65-24, Mississippi Code of 1972:

27-65-24. (1) There is levied, assessed and shall be collected a tax on the sale of manufacturing or processing machinery to be installed and/or used at a refinery in this state and on the performance of construction activities at or in regard to a refinery in this state. The tax is in the amount of:

(a) One and one-half percent (1-1/2%) on the gross proceeds of sales for manufacturing or processing machinery without any regard as to whether or not the machinery retains its identity as tangible personal property after installation; and

(b) Three and one-half percent (3-1/2%) of one hundred three and one-half percent (103-1/2%) of the total contract price or compensation paid for the performance of a construction activity.

(2) If the owner of the refinery holds a direct pay permit issued by the Department of Revenue under Section 27-65-93, the owner shall furnish the permit to the seller or person performing the construction activity unless the holder of the direct pay permit is given written instructions or written authority to do otherwise by the commissioner. After being furnished the direct pay permit, the seller or person performing the construction activity shall be relieved of the duty to collect the tax imposed under subsection (1) of this section and the owner of the refinery

shall pay the tax in the manner required by rule and regulation promulgated by the commissioner. The commissioner may assign a distinctive number to the refinery and issue the distinctive number to the owner. The owner of the refinery may furnish the distinctive number to persons performing construction activities in order to allow such persons to purchase component materials and parts for use in the construction activity without the requirement of paying sales tax on the purchases.

(3) Any owner of a refinery who makes application for a distinctive number as provided for in subsection (2), shall be required to execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi under this chapter will be paid when due.

(4) As used in this section:

(a) "Refinery" means any facility that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, or alcohol. The term "refinery" does not include terminals, bulk plants or other locations where finished products are blended.

(b) "Construction activity" means the performance of any activity involving and/or incidental to constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, and other improvement or structure or any part thereof.

(c) "Total contract price or compensation received" means all compensation received for the performance of construction activities, including monies received for all charges related to the contract or construction activities, including, but not limited to, finance charges and late charges; however, where the total contract price of a project exceeds the sum of One Hundred Million Dollars (\$100,000,000.00) that portion of the compensation received in regard to the project that is attributable to design or engineering shall not be considered part of the total contract price or compensation received for construction activities from the project.

(5) This section shall stand repealed from and after July 1, 2011.

SECTION 3. Section 27-65-21, Mississippi Code of 1972, is amended as follows:

[Through June 30, 2011, this section shall read as follows:]

27-65-21. (1) (a) (i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received

exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property. The tax imposed in this section is levied upon the prime contractor and shall be paid by him.

(ii) Amounts included in the contract price or compensation received representing the sale of manufacturing or processing machinery for a manufacturer or custom processor shall be taxed at the rate of one and one-half percent (1-1/2%) in lieu of the three and one-half percent (3-1/2%).

(b) The following shall be excluded from the tax levied by this section:

(i) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system, air-conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include apartment buildings, condominiums, hotels, motels, hospitals, nursing or retirement homes, tourist cottages or other commercial establishments.

(ii) The portion of the total contract price attributable to design or engineering services if the total contract price for the project exceeds the sum of One Hundred Million Dollars (\$100,000,000.00).

(iii) The contract price or compensation received to restore, repair or replace a utility distribution or transmission system that has been damaged due to ice storm, hurricane, flood, tornado, wind, earthquake or other natural disaster if such restoration, repair or replacement is performed by the entity providing the service at its cost.

(iv) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, facility or structure located at any refinery as defined in Section 27-65-24.

(c) Sales of materials and services for use in the activities hereby excluded from taxes imposed by this section, except services used in activities excluded pursuant to paragraph (b)(iii) of this subsection, shall be subject to taxes imposed by other sections in this chapter.

(2) Upon every person engaging or continuing in this state in the business of contracting or performing a contract of redrilling, or working over, or of drilling an oil well or a gas well, regardless of whether such well is productive or nonproductive, for any valuable consideration, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received when such compensation exceeds Ten Thousand Dollars (\$10,000.00).

The words, terms and phrases as used in this subsection shall have the meaning ascribed to them as follows:

"Operator" -- One who holds all or a fraction of the working or operating rights in an oil or gas lease, and is obligated for the costs of production either as a fee owner or under a lease or any other form of contract creating working or operating rights.

"Bottom-hole contribution" -- Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. The contribution is payable whether the well is productive or nonproductive.

"Dry-hole contribution" -- Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. Such contribution is payable only in the event the well is found to be nonproductive.

"Turnkey drilling contract" -- A contract for the drilling of a well which requires the driller to drill a well and, if commercial production is obtained, to equip the well to such stage that the lessee or operator may turn a valve and the oil will flow into a tank.

"Total contract price or compensation received" -- As related to oil and gas well contractors, shall include amounts received as compensation for all costs of performing a turnkey drilling contract; amounts received or to be received under assignment as dry-hole money or bottom-hole money; and shall mean and include anything of value received by the contractor as remuneration for services taxable hereunder. When the kind and amount of compensation received by the contractor is contingent upon production, the taxable amount shall be the total compensation receivable in the event the well is a dry hole. The taxable amount in the event of production when the contractor receives a production interest of an undetermined value in lieu of a fixed compensation shall be an amount equal to the compensation to the contractor if the well had been a dry hole.

(3) When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor.

When a person engaged in any business on which a tax is levied in Section 27-65-23, also qualifies as a contractor, and contracts with the owner of any project to perform any services in excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such person shall pay the tax imposed by this section in lieu of the tax imposed by Section 27-65-23.

Any person entering into any contract over Seventy-five Thousand Dollars (\$75,000.00) as defined in this section shall, before beginning the performance of such contract or contracts, either pay the contractors' tax in advance, together with any use taxes due under Section 27-67-5, or execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner conditioned that all taxes which may accrue to the State of Mississippi under this chapter, or under Section 27-67-5 and Section 27-7-5, will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities taxable under this section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this section, that the tax shall be payable monthly on the amount received during the previous month, and any use taxes due shall be payable on or before the twentieth day of the month following the month in which the property is brought into Mississippi.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in

advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

[From and after July 1, 2011, this section shall read as follows:]

27-65-21. (1) (a) (i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall not include constructing, repairing or adding to property which

retains its identity as personal property. The tax imposed in this section is levied upon the prime contractor and shall be paid by him.

(ii) Amounts included in the contract price or compensation received representing the sale of manufacturing or processing machinery for a manufacturer or custom processor shall be taxed at the rate of one and one-half percent (1-1/2%) in lieu of the three and one-half percent (3-1/2%).

(b) The following shall be excluded from the tax levied by this section:

(i) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system, air-conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include apartment buildings, condominiums, hotels, motels, hospitals, nursing or retirement homes, tourist cottages or other commercial establishments.

(ii) The portion of the total contract price attributable to design or engineering services if the total contract price for the project exceeds the sum of One Hundred Million Dollars (\$100,000,000.00).

(iii) The contract price or compensation received to restore, repair or replace a utility distribution or transmission system that has been damaged due to ice storm, hurricane, flood, tornado, wind, earthquake or other natural disaster if such restoration, repair or replacement is performed by the entity providing the service at its cost.

(c) Sales of materials and services for use in the activities hereby excluded from taxes imposed by this section, except services used in activities excluded pursuant to paragraph

(b)(iii) of this subsection, shall be subject to taxes imposed by other sections in this chapter.

(2) Upon every person engaging or continuing in this state in the business of contracting or performing a contract of redrilling, or working over, or of drilling an oil well or a gas well, regardless of whether such well is productive or nonproductive, for any valuable consideration, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received when such compensation exceeds Ten Thousand Dollars (\$10,000.00).

The words, terms and phrases as used in this subsection shall have the meaning ascribed to them as follows:

"Operator" -- One who holds all or a fraction of the working or operating rights in an oil or gas lease, and is obligated for the costs of production either as a fee owner or under a lease or any other form of contract creating working or operating rights.

"Bottom-hole contribution" -- Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. The contribution is payable whether the well is productive or nonproductive.

"Dry-hole contribution" -- Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. Such contribution is payable only in the event the well is found to be nonproductive.

"Turnkey drilling contract" -- A contract for the drilling of a well which requires the driller to drill a well and, if commercial production is obtained, to equip the well to such stage that the lessee or operator may turn a valve and the oil will flow into a tank.

"Total contract price or compensation received" -- As related to oil and gas well contractors, shall include amounts received as compensation for all costs of performing a turnkey drilling

contract; amounts received or to be received under assignment as dry-hole money or bottom-hole money; and shall mean and include anything of value received by the contractor as remuneration for services taxable hereunder. When the kind and amount of compensation received by the contractor is contingent upon production, the taxable amount shall be the total compensation receivable in the event the well is a dry hole. The taxable amount in the event of production when the contractor receives a production interest of an undetermined value in lieu of a fixed compensation shall be an amount equal to the compensation to the contractor if the well had been a dry hole.

(3) When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor.

When a person engaged in any business on which a tax is levied in Section 27-65-23, also qualifies as a contractor, and contracts with the owner of any project to perform any services in excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such person shall pay the tax imposed by this section in lieu of the tax imposed by Section 27-65-23.

Any person entering into any contract over Seventy-five Thousand Dollars (\$75,000.00) as defined in this section shall, before beginning the performance of such contract or contracts, either pay the contractors' tax in advance, together with any use taxes due under Section 27-67-5, or execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner conditioned that all taxes which may accrue to the State of Mississippi under this chapter, or under

Section 27-67-5 and Section 27-7-5, will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities taxable under this section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this section, that the tax shall be payable monthly on the amount received during the previous month, and any use taxes due shall be payable on or before the twentieth day of the month following the month in which the property is brought into Mississippi.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall

furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

SECTION 4. Section 27-65-93, Mississippi Code of 1972, is amended as follows:

27-65-93. (1) The commissioner shall, from time to time, promulgate rules and regulations, not inconsistent with the provisions of the sales tax law, for making returns and for the ascertainment, assessment and collection of the tax imposed by the sales tax law as he may deem necessary to enforce its provisions; and, upon request, he shall furnish any taxpayer with a copy of the rules and regulations.

(2) All forms, necessary for the enforcement of the sales tax law, shall be prescribed, printed and furnished by the commissioner.

(3) The commissioner may adopt rules and regulations providing for the issuance of permits to manufacturers, utilities, construction contractors, companies receiving bond financing through the Mississippi Business Finance Corporation or the Mississippi Development Authority, and other taxpayers as determined by the commissioner to purchase tangible personal property taxed under Section 27-65-17, items taxed under Section 27-65-18, items taxed under Section 27-65-19, services taxed under Section 27-65-23, items taxed under Section 27-65-24, and items taxed under Section 27-65-26 without the payment to the vendor of the tax imposed by the sales and use tax laws, and providing for persons to report and pay the tax directly to the commissioner in instances where the commissioner determines that these provisions will facilitate and expedite the collection of the tax at the proper rates which may be due on purchases by the permittee. Under the provisions of this chapter, the vendor is relieved of collecting and remitting the taxes specified hereunder and the person holding the permit shall become liable for such taxes

instead of the seller. The full enforcement provisions of the sales tax law shall apply in the collection of the tax from the permittee.

SECTION 5. Section 27-67-5, Mississippi Code of 1972, is amended as follows:

27-67-5. There is hereby levied, assessed and shall be collected from every person a tax for the privilege of using, storing or consuming, within this state, any tangible personal property or specified digital product possession of which is acquired in any manner.

(a) The use tax hereby imposed and levied shall be collected at the same rates as imposed under Section 27-65-20, and Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and 27-65-26 computed on the purchase or sales price, or value, as defined in this article.

(b) It shall be the duty of the tax collectors of the several counties, or the * * * commissioner, as the case may be, to collect, remit and account for the tax on the use of all vehicles licensed or registered by the State of Mississippi for the first time, except when the Mississippi use tax was collected by an authorized out-of-state dealer at the time of purchase, or when the use thereof was exempt by Section 27-67-7. The tax collector or the * * * commissioner shall give to the person registering the vehicle a receipt in a form prescribed and furnished by the Department of Revenue for the amount of tax collected.

The tax collector or * * * commissioner is expressly prohibited from issuing a license tag to any applicant without collecting the tax levied by this article, unless positive proof is filed, together with the application for the license tag, that the Mississippi tax has been paid, or that the sale was exempt by Section 27-67-7.

Persons not engaging and continuing in business so as to be registered for payment of sales and/or use tax may pay use tax due on the first use of boats, airplanes, equipment or other tangible personal property and specified digital products to county tax collectors who are hereby authorized to accept such payments on behalf of the commissioner. Receipts for all such payments shall be given to taxpayers in a form prescribed and furnished by the Department of Revenue.

County tax collectors and the * * * commissioner shall be liable for the tax they are required hereby to collect, and taxes which are in fact collected under authority of this section; and failure to properly collect or maintain proper records shall not relieve them of liability for payment to the commissioner. Deficiencies in collection or payment shall be assessed against the tax collector or * * * commissioner in the same manner and subject to the same penalties and provisions for appeal as are deficiencies assessed against taxpayers.

A dealer authorized to collect and remit the tax to the Department of Revenue shall give to the purchaser a receipt for the payment of the tax, in a form prescribed and furnished by the commissioner, which shall serve as proof of payment to the tax collector of the county in which the license is to be issued.

Each tax collector of the several counties shall, on or before the twentieth day of each month, file a report with and pay to the commissioner all funds collected under the provisions of this article, less a commission of five percent (5%) which shall be retained by the tax collector as a commission for collecting such tax and be deposited in the county general fund. The report required to be filed shall cover all collections made during the calendar month next preceding the date on which the report is due and filed.

Any error in the report and remittance to the commissioner may be adjusted on a subsequent report. If the error was in the

collection by the tax collector, it shall be adjusted through the tax collector with the taxpayer before credit is allowed by the commissioner.

All information relating to the collection of use tax by tax collectors and such records as the commissioner may require shall be preserved in the tax collector's office for a period of three (3) years for audit by the commissioner.

SECTION 6. Section 57-3-33, Mississippi Code of 1972, is amended as follows:

57-3-33. The bonds authorized by this chapter, the income therefrom, all mortgages or deeds of trust executed as security therefor, all lease or purchase agreements made pursuant to the provisions hereof, and all purchases required to establish the enterprise and financed by bond proceeds shall be exempt from all taxation in the State of Mississippi except the contractors' tax imposed by Section 27-65-21 and the tax levied by Section 27-65-24(1)(b) and all projects and the revenue derived from any lease thereof shall be exempt from all taxation in the State of Mississippi, except the tax levied by Sections 27-65-21 and 27-65-24(1)(b). From and after July 1, 1989, there shall be no new exemption under this section or under Chapter 10, Title 57, Mississippi Code of 1972, from ad valorem taxes levied for school district purposes. The time of any ad valorem tax exemption provided for hereunder shall not exceed a total of ten (10) years, which shall run from the date of completion of the project. In no event shall the term of the ad valorem tax exemption provided for hereunder be limited, terminated or otherwise affected by payment in full of the bonds issued under this chapter or by the change from a leasehold to a fee title in the enterprise financed with bonds issued under this chapter.

SECTION 7. Section 57-10-255, Mississippi Code of 1972, is amended as follows:

57-10-255. (1) The company is hereby declared to be performing a public function and to be a public body corporate and a political subdivision of the state. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the company, shall at all times be exempt from all taxation by the state or any public subdivision thereof. If, after all indebtedness and other obligations of the company are discharged the company is dissolved, its remaining assets shall inure to the benefit of the state.

(2) All mortgages or deeds of trust executed as security therefor, all lease, loan or purchase agreements made pursuant to the provisions hereof, all purchases required to establish the enterprise and financed by proceeds from bonds issued pursuant to Chapter 10, Title 57, Mississippi Code of 1972, shall likewise be exempt from all taxation in the State of Mississippi except the contractors' tax imposed by Section 27-65-21 and the taxes levied by Section 27-65-24(1)(b), and all projects financed by the proceeds from such bonds and the revenue derived from any lease thereof shall be exempt from all taxation in the State of Mississippi, except the tax levied by Sections 27-65-21 and 27-65-24(1)(b), and except the tax levied under Chapter 7, Title 27, Mississippi Code of 1972. From and after July 1, 2002, there shall be no new ad valorem tax exemption authorized under this section unless approved by the appropriate local taxing authority.

(3) The time of any ad valorem tax exemption provided for hereunder shall not exceed a total of ten (10) years, which shall run from the date of the completion of the project. In no event shall the term of the ad valorem tax exemption provided for hereunder be limited, terminated or otherwise affected by payment in full of the bonds issued under this chapter or by the change from a leasehold to a fee title in the enterprise financed with bonds issued under this chapter.

(4) From and after July 1, 1990, there shall be no new exemption under this section from ad valorem taxes levied for school district purposes.

SECTION 8. Section 57-10-439, Mississippi Code of 1972, is amended as follows:

57-10-439. (1) The corporation is hereby declared to be performing a public function and to be a public body corporate and a political subdivision of the state. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the corporation, shall at all times be exempt from all taxation by the state or any political subdivision thereof. If, after all indebtedness and other obligations of the corporation are discharged, the corporation is dissolved, its remaining assets shall inure to the benefit of the state.

(2) With the approval of the appropriate local taxing authority, all mortgages or deeds of trust executed as security therefor, all lease or purchase agreements made pursuant to the provisions hereof, and all purchases required to establish the industrial enterprise and financed by proceeds from bonds issued under Sections 57-10-401 through 57-10-445, shall likewise be exempt from all taxation in the State of Mississippi except the contractors' tax imposed by Section 27-65-21 and the tax levied by Section 27-65-24(1)(b), and except ad valorem taxes levied for school district purposes. All projects and the revenue derived therefrom from any lease thereof shall be exempt from all taxation in the State of Mississippi, except the tax levied by Sections 27-65-21 and 27-65-24(1)(b), except the tax levied under Chapter 7, Title 27, Mississippi Code of 1972, and except ad valorem taxes levied for school district purposes.

SECTION 9. Section 57-71-13, Mississippi Code of 1972, is amended as follows:

57-71-13. The Mississippi Business Finance Corporation shall promulgate lending guidelines, rules and regulations as may be necessary to carry out the provisions of this act.

The Mississippi Business Finance Corporation may work closely with the planning and development districts in identifying eligible projects and making the program available in all areas of the state.

As part of the lending criteria, the Mississippi Business Finance Corporation must receive a commitment that the proposed project will create a minimum of ten (10) net new full-time equivalent jobs.

Notwithstanding the provisions of Section 27-65-101(1), Mississippi Code of 1972, and other applicable laws, all purchases required to establish any project and financed by proceeds from bonds issued under this act shall be exempt from all taxation in the State of Mississippi except the contractors' tax imposed by Sections 27-65-21 and 27-65-24(1)(b).

SECTION 10. Section 27-65-75, Mississippi Code of 1972, is amended as follows:

27-65-75. On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1) (a) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation. On or before August 15, 1993, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that

collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.

Monies allocated for distribution and credited to a municipal corporation under this subsection may be pledged as security for a loan if the distribution received by the municipal corporation is otherwise authorized or required by law to be pledged as security for such a loan.

In any county having a county seat that is not an incorporated municipality, the distribution provided under this subsection shall be made as though the county seat was an incorporated municipality; however, the distribution to the municipality shall be paid to the county treasury in which the municipality is located, and those funds shall be used for road, bridge and street construction or maintenance in the county.

(b) On or before August 15, 2006, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities on the campus of a state institution of higher learning or community or junior college whose campus is not located within the corporate limits of a municipality, shall be allocated for distribution to the state institution of higher learning or community or junior college and paid to the state institution of higher learning or community or junior college.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, One Million One Hundred Twenty-five

Thousand Dollars (\$1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The Department of Revenue shall require all distributors of gasoline and diesel fuel to report to the department monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The Department of Revenue shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the State Tax Commission may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund that highway program. The Mississippi Department of Transportation shall provide to the Department of Revenue such information as is

necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars (\$4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii)1, Four Million Dollars (\$4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23-1/4%) of those funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Those funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds previously allocated to counties under this section. Those funds may not be pledged for the payment of any state aid road bonds issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue those bonds has been published, for the first time, as provided by law before March 29, 1981. From the amount of taxes paid into the special fund under this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

(a) One-third (1/3) shall be allocated to all counties in equal shares;

(b) One-third (1/3) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state; and

(c) One-third (1/3) shall be allocated to counties based on the proportion that the rural population of the county bears to the total rural population in all counties of the state, according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline, diesel fuel or kerosene taxes" means such taxes as defined in paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this subsection for any fiscal year after fiscal year 1994 shall not be less than the amount allocated to the county for fiscal year 1994.

Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars (\$1,666,666.00) each month shall be paid into the special fund known as the "State Public School Building Fund" created and existing under the provisions of Sections 37-47-1 through 37-47-67. Those payments into that fund are to be made on the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through November 15, 1986, as specified in Section 6 of Chapter 542, Laws of 1983, shall be paid into the special fund known as the Correctional Facilities Construction Fund created in Section 6 of Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2000, two and two hundred sixty-six

one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited by the commission into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars (\$42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars (\$42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the Education Enhancement Fund created under Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected

under this chapter during the preceding month, Two Million Dollars (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101 and the corresponding levy in Section 27-65-23 on the rental or lease of these vehicles, shall be deposited, after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the fifteenth day of each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-22 that is derived from activities held on the Mississippi State Fairgrounds Complex, shall be paid into a special fund that is created in the State Treasury and shall be expended upon legislative appropriation solely to defray the costs of repairs and renovation at the Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be

paid into the General Fund, shall be deposited in an amount not to exceed Two Million Dollars (\$2,000,000.00) into the special fund created under Section 69-37-39. On or before August 15, 2007, and each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund, shall be deposited in an amount not to exceed Two Million Dollars (\$2,000,000.00) into the special fund created under Section 69-37-39 until all debts or other obligations incurred by the Certified Cotton Growers Organization under the Mississippi Boll Weevil Management Act before January 1, 2007, are satisfied in full.

(15) Notwithstanding any other provision of this section to the contrary, on or before September 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-19(1)(f) and (g)(i)2, shall be deposited, without diversion, into the Telecommunications Ad Valorem Tax Reduction Fund established in Section 27-38-7.

(16) (a) On or before August 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a project as defined in Section 57-30-1 shall be deposited, after all diversions except the diversion provided for in subsection (1) of this section, into the Sales Tax Incentive Fund created in Section 57-30-3.

(b) On or before August 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-26-1 through 57-26-5, shall be deposited, after the diversions required in subsections (7) and

(8) of this section, into the Tourism Project Sales Tax Incentive Fund created in Section 57-26-3.

(17) Notwithstanding any other provision of this section to the contrary, on or before April 15, 2002, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under Section 27-65-23 on sales of parking services of parking garages and lots at airports shall be deposited, without diversion, into the special fund created under Section 27-5-101(d).

(18) [Repealed]

(19) (a) On or before August 15, 2005, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and the revenue collected on the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall, except as otherwise provided in this subsection (19), be deposited, after all diversions, into the Redevelopment Project Incentive Fund as created in Section 57-91-9.

(b) For a municipality participating in the Economic Redevelopment Act created in Sections 57-91-1 through 57-91-11, the diversion provided for in subsection (1) of this section attributable to the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and attributable to the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that

such sales made to a business enterprise are made on the premises of the business enterprise), shall be deposited into the Redevelopment Project Incentive Fund as created in Section 57-91-9, as follows:

(i) For the first six (6) years in which payments are made to a developer from the Redevelopment Project Incentive Fund, one hundred percent (100%) of the diversion shall be deposited into the fund;

(ii) For the seventh year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, eighty percent (80%) of the diversion shall be deposited into the fund;

(iii) For the eighth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, seventy percent (70%) of the diversion shall be deposited into the fund;

(iv) For the ninth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, sixty percent (60%) of the diversion shall be deposited into the fund; and

(v) For the tenth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, fifty percent (50%) of the funds shall be deposited into the fund.

(20) On or before January 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-28-1 through 57-28-5, shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Sales Tax Incentive Fund created in Section 57-28-3.

(21) On or before April 15, 2007, and each succeeding month thereafter, One Hundred Fifty Thousand Dollars (\$150,000.00) of

the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the MMEIA Tax Incentive Fund created in Section 57-101-3.

(22) Notwithstanding any other provision of this section to the contrary, on or before August 15, 2009, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-201 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(23) The remainder of the amounts collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.

(24) It shall be the duty of the municipal officials of any municipality that expands its limits, or of any community that incorporates as a municipality, to notify the commissioner of that action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause the municipality to forfeit the revenue that it would have been entitled to receive during this period of time when the commissioner had no knowledge of the action. If any funds have been erroneously disbursed to any municipality or any overpayment of tax is recovered by the taxpayer, the commissioner may make correction and adjust the error or overpayment with the municipality by withholding the necessary funds from any later payment to be made to the municipality.

SECTION 11. This act shall take effect and be in force from and after July 1, 2010.

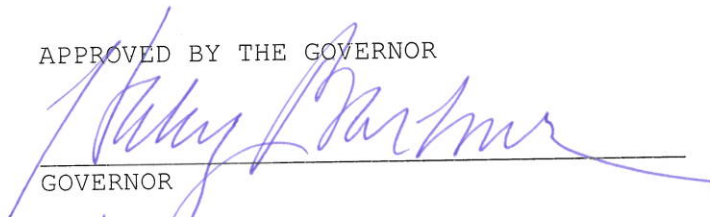
PASSED BY THE HOUSE OF REPRESENTATIVES
February 24, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 11, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3/30/10 11:20 am